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BY HAND

August 22, 2005

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2005-16

2005 AUG 22 P 1:40
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Fired Up

Dear Mr. Norton:

Pursuant to 2 U.S.C. § 437f (2005), we seek an advisory opinion on behalf of Fired Up! LLC ("Fired Up"). Fired Up seeks affirmation that its publication of a network of progressive blogs across the country qualifies for the press exemption at 2 U.S.C. § 431(9)(B)(i).

I. FACTUAL DISCUSSION

Fired Up is a for-profit, limited liability company formed under the laws of Missouri. Fired Up publishes a network of web sites that provide a progressive viewpoint on political issues of the day. The flagship site, Fired Up! America, contains analysis on the top three or four political stories of the day, along with headline feeds from major national news outlets. The site can be viewed at [HTTP://WWW.FIREUPAMERICA.COM](http://www.firedupamerica.com).

Fired Up! America receives feeds from a network of state-specific sites. Presently, Fired Up has sites directed toward Missouri, Maryland and Washington, available at [HTTP://WWW.FIREUPMISSOURI.COM](http://www.firedupmissouri.com), [HTTP://WWW.FIREUPMARYLAND.COM](http://www.firedupmaryland.com), and [HTTP://WWW.FIREUPWASHINGTON.COM](http://www.firedupwashington.com), respectively. Depending on the level of investment it obtains, Fired Up hopes to maintain a network of up to 15 state-specific sites in the coming year.

Fired Up conducts original news reporting of its own. For example, Fired Up Missouri recently revealed that a political committee associated with Republican Majority Leader Tom DeLay made substantial political contributions to another

[58968-0001/DA052240.029]

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Perkins Coie LLP (Perkins Coie LLC in Illinois)

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committee associated with Majority Whip Roy Blunt – a fact that had been overlooked by other media outlets. *See*

[HTTP://WWW.FIREDUPMISSOURI.COM/DELAYBLUNT](http://www.firedupmissouri.com/delayblunt). *See also, e.g.,*

[HTTP://WWW.FIREDUPMISSOURI.COM/VETOINSURANCE](http://www.firedupmissouri.com/vetoinsurance) (revealing payments to lobbyist connected with Blunt to lobby his son, Governor Matt Blunt, on veto).

Fired Up also publishes commentary on social, political and economic justice issues. For example, it decried a decision by Wal Mart to sue a severely disabled employee for recovery of her medical expenses, which had been paid initially by its health plan, and urged readers to contact Wal Mart's CEO in opposition. *See*

[HTTP://WWW.FIREDUPAMERICA.COM/SHANKWALMART](http://www.firedupamerica.com/shankwalmart). Fired Up intends to endorse, expressly advocate, and urge readers to donate funds to the election of Democratic candidates for federal, state and local office. Fired Up also intends to publish commentary by prominent progressive figures, including Democrats, as well as by informed political operatives at the local level.

While the content of the sites is unabashedly progressive, and contains links to Democratic and progressive organizations, Fired Up is neither owned nor controlled by any political party, political committee or candidate. Access to the sites is free. Fired Up currently generates some revenue by selling buttons, bumper stickers and T-shirts. Fired Up intends to generate additional revenue through the sale of advertising. Like many "think" magazines, both progressive and conservative, as well as public broadcasting outlets, Fired Up may solicit funding from various benefactors and investors.

II. LEGAL DISCUSSION

A. Application of the Press Exemption Generally

1. Statutory language and history

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* (2005), regulates the making of "contributions" and "expenditures" in connection with federal elections. *See, e.g.,* 2 U.S.C. §§ 441a, 441b. From the definition of "expenditure," the Act exempts

any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication,

unless such facilities are owned or controlled by any political party, political committee, or candidate ...

2 U.S.C. § 431(9)(B)(i). To implement this statute, Commission rules provide parallel exemptions from the definition of "contribution" and expenditure" for the costs incurred in covering or carrying such news stories, commentaries or editorials. *See* 11 C.F.R. §§ 100.73 and 100.132 (2005).

The press exemption was crafted to be "consistent with First Amendment principles." *McConnell v. FEC*, 540 U.S. 93, 208 (2003). The authors of the Act wanted to "make it plain that it is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association ... [The exemption] assures the unfettered right of the newspapers, TV networks, and *other media* to cover and comment on political campaigns." H.R. Rep. No. 93-1239, at 4 (1974) (emphasis added).

The exemption "does not afford carte blanche to media companies generally to ignore FECA's provisions." 540 U.S. at 208. Nonetheless, the press exemption "must be construed and applied to preserve the full protections of the First Amendment for both fact and commentary in a bona fide press entity, consistent with the legislative intent behind the adoption of the exemption." Commissioners Wold, Elliott, Mason and Sandstrom, Statement of Reasons for Voting to Withdraw the Commission's Complaint in *FEC v. Forbes, et al.* (May 26, 1999).

The legislative intent of the press exemption – to ensure that the Act did not infringe on First Amendment freedoms – is especially relevant to Internet communications. As the Supreme Court observed, when it held that government restrictions on the Internet were subject to unqualified First Amendment scrutiny, "any person with a phone line can become a town crier, with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). The Commission is now considering whether to extend the press exemption expressly to Internet communications. *See* Internet Communications, 70 Fed. Reg. 16,967, 16,974-95 (2005). Nonetheless, as discussed further below, prior Commission actions suggest that the exemption, as now written, covers Internet communications.

2. History of Commission interpretation

The Commission normally applies a two-step analysis in deciding whether the press exemption applies to proposed conduct. First, it asks whether the entity engaging in

the activity is "a press entity described by the Act and Commission regulations." *See* Advisory Opinion 2004-7. Second, it asks whether the press entity is owned or controlled by a political party, political committee, or candidate; and whether it is acting as a press entity in performing the activity. *See id.*

a. Whether an entity is a "press entity"

With regard to the first question – whether the entity qualifies as a "press entity" – the regulations refer to "any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, *or other periodical publication.*" 11 C.F.R. § 100.73 (emphasis added).

Nonetheless, the Commission has repeatedly found publishers of Internet communications to be press entities:

- For example, in 2000, the Commission advised that iNEXTTV was a press entity, even when it had no bricks and mortar counterpart, based on the fact that its web sites were "viewable by the general public and akin to a periodical or news program distributed to the general public." Advisory Opinion 2000-13.¹
- In 1996, the Commission found that Bloomberg, L.P. qualified as a press entity when its "core business ... acts as a news and commentary provider via computer linkages, performing a news or periodical publication function for computer users." Advisory Opinion 1996-16.
- In 2004, the Commission found MTV to qualify as a press entity when its activities included online communications. Advisory Opinion 2004-7.

Once it is established that the medium of communications falls within the rule, the Commission then normally looks to whether the entity is in the "regular business" of

¹ The holding in Advisory Opinion 2000-13 is consistent with the proposed rules now being considered by the Commission, which "expressly reject[] a policy that only a *bona fide* press entity with an off-line component is entitled to protection in their on-line news stories, commentaries, and editorials." 70 Fed. Reg. at 16,975.

distributing news or commentary. First General Counsel's Report, MUR 5540 *et al.*, at 5.²

A profit motive is not essential to press entity status, even though the Commission has sometimes found subscription or advertising revenue to indicate a regular business, *see, e.g.*, Advisory Opinion 2000-13 n.3 (citing Advisory Opinions 1988-22 and 1980-109). As three Commissioners once said: "We do not think the Commission should consider whether a publisher makes a profit from its publications. If that were the standard, then many prominent 'think magazines' that are significant in the Washington debate would not qualify for the press exemption." Commissioners Smith, Toner and Mason, Statement of Reasons, MUR 5315 (Aug. 25, 2003).³

Nor does ideological slant or bias bar press entity status. "Neither the statute nor the regulations require that for the press exemption to apply, the press verify its stories, be accurate, be fair or be balanced." Commissioners Mason and Smith, Statement of Reasons, MUR 5540 *et al.*, at 7. "Even seemingly biased stories or commentary by a press entity can fall within the media exemption." First General Counsel's Report, MUR 5540 *et al.*, at 5 (citing MURs 3624 and 4946). One of the first advisory opinions applying the press exemption found a subscription periodical, *The Ruff Times*, to qualify as a press entity even when the requestor, a U.S. House candidate, had apparent reason to believe that the publication would endorse him and solicit contributions to his campaign. *See* Advisory Opinion 1980-109.

b. Whether a "press entity" otherwise qualifies for the exemption

Once it has been established that an entity qualifies as a "press entity," the question then becomes whether it is owned or controlled by a political party, political committee, or candidate; and whether it is acting as a press entity in performing the

² *See also* Advisory Opinion 1996-2 (denying application of press entity status to CompuServe, when the facts suggested that CompuServe was not itself in the business of distributing news or commentary, but rather proposed simply to provide free access to federal candidates).

³ Another commenter once argued that paid subscribers or advertisers "are not statutory requirements for the news exemption: if they were, public radio would not qualify for the exemption either, a clearly untenable conclusion." Letter from Trevor Potter, for the Democracy Network, to the Honorable Scott E. Thomas (Oct. 26, 1999) (commenting on Draft Advisory Opinion 1999-25).

media activity. *See, e.g.*, 11 C.F.R. § 100.73; Advisory Opinion 2004-7. The limits on party, political committee or candidate ownership and control are derived directly from the statute. *See* 2 U.S.C. § 431(9)(B)(i). The requirement that a press entity act in that capacity in order to qualify for the exemption arises principally from *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) and *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210 (S.D.N.Y. 1981).

Ownership or control is not the same as coordination. "Allegations of coordination are of no import when applying the press exemption." Commissioners Toner, Mason and Smith, Statement of Reasons, MUR 5540 *et al.*, at 3. "[T]he press exemption shields press entities from investigations into alleged coordination." Commissioner Weintraub, Statement of Reasons, MUR 5540 *et al.* *See also* First General Counsel's Report, MUR 5540 *et al.*, at 6 ("the coordination regulations exclude news stories falling within the media exemption").

Whether a press entity is found to be acting in that capacity depends on whether its activities are comparable to those it normally undertakes. *See Massachusetts Citizens for Life*, 479 U.S. at 250-51. In *MCFL*, for example, the Supreme Court found it unnecessary to reach the question of whether the group was a press entity, because of the circumstances in which the newsletter at issue was distributed:

We need not decide whether the regular MCFL newsletter is exempt under this provision, because, even assuming that it is, the "Special Edition" cannot be considered comparable to any single issue of the newsletter. It was not published through the facilities of the regular newsletter, but by a staff which prepared no previous or subsequent newsletters. It was not distributed to the newsletter's regular audience, but to a group 20 times the size of that audience, most of whom were members of the public who had never received the newsletter. No characteristic of the Edition associated it in any way with the normal MCFL publication. The MCFL masthead did not appear on the flyer, and despite an apparent belated attempt to make it appear otherwise, the Edition contained no volume and issue number identifying it as one in a continuing series of issues.

479 U.S. at 250-51. These "considerations of form" keep the door from being opened "for those corporations and unions with in-house publications to engage in unlimited spending directly from their treasuries to distribute campaign material to the general public, thereby eviscerating sec. 441b's prohibition." *Id.* at 251.

The Commission has applied this approach to withhold the media exemption from an entity that proposed to pay a broadcaster to distribute a broadcast, instead of receiving compensation itself, *see* Advisory Opinion 2004-36; from a non-profit organization barred from engaging in business activities that proposed to send free communications supporting candidates, instead of publishing a regularized periodical, *see* Advisory Opinion 1988-22; and from an insurance company that proposed to distribute books featuring interviews with presidential candidates, *see* Advisory Opinion 1987-8.

However, this same approach led the Commission to apply the press exemption to a television network accused of coordinating a false story with a presidential campaign, when the broadcast in question occurred on a regularly scheduled program as part of the network's regularly scheduled business. *See* MURs 5540 and 5545. They apparently led at least three Commissioners to apply the press exemption to a magazine mailed by Wal-Mart to more than 191,000 North Carolina readers, featuring a cover story about Republican Senate candidate Elizabeth Dole, and containing a picture of a child wearing a Dole sticker, when the company regularly published the magazine. *See* Commissioners Smith, Toner and Mason, Statement of Reasons, MUR 5315.

B. Application of the Press Exemption to Fired Up

The press exemption covers the activities of Fired Up. Fired Up publishes news stories, commentaries and editorials. *See* 2 U.S.C. § 431(9)(B)(i). Its network of Web sites is "viewable by the general public and akin to a periodical or news program distributed to the general public." Advisory Opinion 2000-13. It is not owned or controlled by any political party, political committee or candidate. *See* 2 U.S.C. § 431(9)(B)(i). Its self-generated posts are like a newspaper's editorials; the comments posted by readers are like letters to the editor.

Fired Up's regular – and indeed, sole – business is to distribute the aforementioned news stories, editorials and commentaries. It intends to generate revenue through the sale of advertising and promotional items. It hopes to make a profit – although neither profit nor advertising sales should be necessary to its status as a press entity. *See* Commissioners Smith, Toner and Mason, Statement of Reasons, MUR 5315. While Fired Up intends aggressively to support progressive candidates and causes at all levels, neither its ideological bias nor its express advocacy affects the analysis of whether the press exemption applies. *See, e.g.,* Commissioners Mason and Smith,

Statement of Reasons, MUR 5540 *et al.* ("neither ... verification or express advocacy ... affects whether the press exemption applies.").

Fired Up is neither owned nor controlled by a political party, political committee or candidate. At all times, it intends to act as a press entity – publishing news, editorials and commentary. It is not an organization engaged in some other line of work, issuing publications from time to time under irregular circumstances. Unlike mass mailings or special newsletters, the contents of Fired Up are not thrust upon unwilling or targeted readers; people choose consciously to read it. It is wholly devoted to the publication of regular, if sometimes partisan, content.

Fired Up respectfully suggests that these circumstances present a straightforward application of the press exemption. One might contend that Fired Up's ideological focus distinguishes it from other entities found by the Commission to have enjoyed the press exemption. Yet this is not the case. The exemption has covered the activities of many who – rightly or wrongly – have been presumed at times to act from partisan motives – whether Rush Limbaugh, *see* MUR 3624; CBS News, *see* MUR 5540; or presidential candidate Steve Forbes, *see* Commissioners Wold, Elliott, Mason and Sandstrom, Statement of Reasons for Voting to Withdraw the Commission's Complaint in *FEC v. Forbes, et al.* (May 26, 1999). The press exemption presumably extends to the likes of The New Republic, National Review, The Nation and The Weekly Standard. *See* Commissioners Smith, Toner and Mason, Statement of Reasons, MUR 5315

Among the earliest publications of news and commentary in the United States were explicitly partisan. *See, e.g., Peter Porcupine in America: Pamphlets on Republicanism and Revolution* (David A. Wilson, ed., Cornell Univ. 1994); Michael Durey, *With the Hammer of Truth: James Thomas Callender and America's Early National Heroes* (U. Va. Press 1990). These were the "town criers" of their day – those whom the Internet now permits anyone to emulate, at virtually no cost. *See Reno v. ACLU*, 521 U.S. at 870.

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The First Amendment principles that prompted Congress to enact the press exemption; the text of the statute and regulations; the reasoning and history of the Commission's interpretation of those rules – all of these factors warrant an advisory opinion permitting Fired Up's proposed conduct.

Very truly yours,



Marc E. Elias
Brian G. Svoboda
Counsel to Fired Up! LLC

cc: Commissioner McDonald
Commissioner Mason
Commissioner Smith
Commissioner Thomas
Commissioner Toner
Commissioner Weintraub
Rosemary Smith, Esq.

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September 12, 2005

Brad Deutsch, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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COMMISSION
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COUNSEL
2005 SEP 13 P 2: 11

Re: Fired Up! LLC

Dear Mr. Deutsch:

We write to follow up on our telephone conference of August 31, 2005, in which you sought additional information pertaining to our client, Fired Up! LLC. While we view the Advisory Opinion Request filed by our client on August 22 as having provided a complete description of all the relevant facts, we understand that additional information may be useful to the General Counsel in drafting a timely response, and we are pleased to provide information toward that end.

As the enclosed documents reflect, Fired Up! LLC filed Articles of Organization with the Missouri Secretary of State on March 4, 2005.¹ Its organizer and registered agent is Scott Sorrell; its members are Jean Carnahan, Roy Temple and Scott Sorrell. The LLC has indicated its intent to be taxed under state law as a partnership. Because it was formed just very recently, it has not yet made a formal election for tax status with the Internal Revenue Service, nor has it adopted an operating agreement.

¹ Please note that we have redacted some personal information from the documents produced, such as Social Security numbers, to protect the privacy of the affected individuals in the event these documents are placed on the public record.

[58968-0001/DA052500.009]

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Currently the LLC has no employees, although it anticipates hiring employees as its revenues grow and its activities expand. The three members of the LLC perform different types of work for the LLC in connection with the Fired Up! web sites. The LLC has contracted with Scott Sorrell's firm to receive technological support. Thus far, the operating costs of the LLC are limited to the engagement of Mr. Sorrell's firm, although it is expected that these costs will increase as revenues grow. Jean Carnahan provides design advice and services on behalf of the LLC to the sites. Both Mr. Sorrell and Ms. Carnahan occasionally provide content to the sites on behalf of the LLC.

Roy Temple generates the bulk of the content for the sites on behalf of the LLC. He does so now on an uncompensated basis, although he expects to be paid by the LLC as an employee when it has generated sufficient revenue to do so. He also exercises final editorial control on behalf of the LLC over the content of the sites. Thus, when content is generated by readers of the sites, as is the case with comments posted by registered users, he might edit that content, delete it, move it to the front page of the site, or leave it alone.

Like other "blogs," the site provides links to other news organizations' web sites, but not under formal agreements. As you noted, there is a section on the front pages of the sites labeled "Popular content" that sometimes includes reader-posted content, as well as content posted by Mr. Temple and others. Subject to the editorial control that Mr. Temple exercises on behalf of the LLC, the contents of this section are determined by the number of "hits" that a particular article or comment on a site receives from readers.

Neither Mr. Temple nor any other contributor to the site has yet sought or received press credentials from any entity; the nature of the reporting they have done thus far has involved documentary research and has not required attendance at press conferences. As we discussed, there have been occasions on which other media outlets have referred to Fired Up! reporting; with this letter, we enclose a copy of two such articles that ran recently in the *St. Louis Post-Dispatch* and on the National Journal web site, respectively.

As we indicated in the initial request, neither Fired Up! LLC nor any of the web sites that it publishes is owned or controlled by any candidate or political party. There are circumstances under which a candidate or party agent may be able to post content to the Fired Up! web site – again, for example, through comments posted by registered users – but they would do so in the same manner as others in the general public. In

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any event, Fired Up! LLC, through Roy Temple, retains final editorial control over content posted to the sites, whether that content is generated initially by a candidate, a political party or anyone else.

We hope this addresses the questions you raised. If you need further clarification, or have questions about other matters, please do not hesitate to contact us directly.

Very truly yours,

Handwritten signatures of Marc E. Elias and Brian G. Svoboda.

Marc E. Elias
Brian G. Svoboda

Enclosures

STATE OF MISSOURI



Robin Carnahan
Secretary of State

CERTIFICATE OF ORGANIZATION

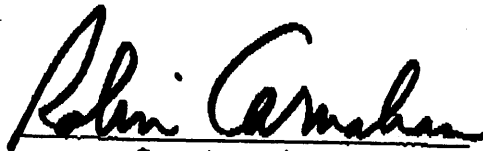
WHEREAS,

Fired Up!, LLC
LC0643875

filed its Articles of Organization with this office on the 4th day of March, 2005, and that filing was found to conform to the Missouri Limited Liability Company Act.

NOW, THEREFORE, I, ROBIN CARNAHAN, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do certify and declare that on the 4th day of March, 2005, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 4th day of March, 2005.


Secretary of State



Form SS-4 (Rev. December 2001) Department of the Treasury Internal Revenue Service		Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ See separate instructions for each line. ▶ Keep a copy for your records.		EIN 20-2450516 OMB No. 1545-0003	
1* Legal name of entity (or individual) for whom the EIN is being requested Fired Up LLC					
2 Trade name of business (if different from name on line 1)			3 Executor, trustee, "care of" name Scott Sorrell		
4a* Mailing address (room, apt., suite no. and street, or P.O. box) PO Box 384			5a Street address (if different) (Do not enter a P.O. box) 406 N Main St		
4b* City, state, and ZIP code Rolla MO 65402 - 0364			5b City, state, and ZIP code Rolla MO 65401		
6* County and state where principal business is located County Phelps State MO					
7a* Name of principal officer, general partner, grantor, owner, or trustee Scott Sorrell			7b* SSN, ITIN, EIN		
8a* Type of entity (check only one)					
<input type="checkbox"/> Sole Proprietor (SSN) <input type="checkbox"/> Estate (SSN of decedent) <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Plan administrator (SSN) <input type="checkbox"/> Corporation (enter form number to be filed) ▶ <input type="checkbox"/> Trust (SSN of grantor) <input type="checkbox"/> Personal Service <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> Other nonprofit organization (specify) ▶ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal government/enterprises <input type="checkbox"/> Other (specify) ▶ <input type="checkbox"/> Group Exemption NO. (GEN) ▶					
8b If a corporation, name the state or foreign country (if applicable) where incorporated		State		Foreign country	
9* Reason for applying (check only one)					
<input checked="" type="checkbox"/> Started new business (specify type) ▶ commentary website					
<input type="checkbox"/> Banking purpose (specify purpose) ▶ <input type="checkbox"/> Changed type of organization (specify new type) ▶ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ <input type="checkbox"/> Created a pension plan (specify type) ▶					
<input type="checkbox"/> Hired employees (Check the box and see line 12) <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Other (specify) ▶					
10* Date business started or acquired (month, day, year) MAR 4 2005			11* Closing month of accounting year DEC		
12 First date wages or annuities were paid or will be paid (month, day, year) <i>Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)</i> ▶					
13 Highest number of employees expected in the next twelve months <i>Note: If the applicant does not expect to have any employees during the period, enter "0."</i> ▶					
			Agriculture 0		Household 0
			Other 0		
14* Check box that best describes the principal activity of your business					
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Health care & social assistance <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-other <input checked="" type="checkbox"/> Other (specify) commentary website <input type="checkbox"/> Retail					
15* Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided. Maintain commentary website					
16a* Has the applicant ever applied for an employer identification number for this or any other business? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Note: If "Yes" please complete lines 16b and 16c</i>					
16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above.					
Legal name ▶					
Trade name ▶					
16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known.					
Approximate date when filed (month, day, year)		City and state where filed		Previous EIN	
Complete section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.					
Third Party Designee	Designee's name				
	Address and ZIP code				
	Designee's telephone number (include area code) () - -				
	Designee's fax number (include area code) () - -				
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.					
Name and title (type or print clearly) ▶ Scott Sorrell - Member					
Signature ▶ Not Required Date ▶ March 08, 2005 GMT					
					Applicant's telephone number (include area code)
					Applicant's fax number (include area code)



State of Missouri
Robin Carnahan, Secretary of State

Corporations Division
P.O. Box 778 / 608 W. Main Street, Rm 222
Jefferson City, MO 65102

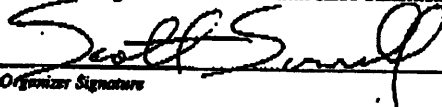
File Number: 200506353813
LC0643875
Date Filed: 03/04/2006
Robin Carnahan
Secretary of State

Articles of Organization
(Submit with filing fee of \$105)

1. The name of the limited liability company is:
Fired Up!, LLC
(Must include "Limited Liability Company," "Limited Company," "LC," "L.C.," "LLC," or "LLC")
2. The purpose(s) for which the limited liability company is organized: To publish a website and any other lawful purpose
3. The name and address of the limited liability company's registered agent in Missouri is:
Scott Sorrell, 406 N. Main Street, Rolla, Missouri 65401


<small>Name</small>	<small>Street Address: May not use P.O. Box unless street address also provided</small>	<small>City/State/Zip</small>
---------------------	---	-------------------------------
4. The management of the limited liability company is vested in: ☐ managers ☒ members (check one)
5. The events, if any, on which the limited liability company is to dissolve or the number of years the limited liability company is to continue, which may be any number or perpetual: LLC to continue until December 31, 2049
(The answer to this question could cause possible tax consequences, you may wish to consult with your attorney or accountant)
6. The name(s) and street address(es) of each organizer (P.O. Box may only be used in addition to a physical street address):
Scott Sorrell, 406 N. Main Street, Rolla, Missouri 65401
7. The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows: _____
(Date may not be more than 90 days after the filing date in this office)

In Affirmation thereof, the facts stated above are true and correct:
(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

 <small>Organizer Signature</small>	Scott Sorrell <small>Printed Name</small>	3/04/2006 <small>Date</small>
_____ <small>Organizer Signature</small>	_____ <small>Printed Name</small>	_____ <small>Date</small>
_____ <small>Organizer Signature</small>	_____ <small>Printed Name</small>	_____ <small>Date</small>

Name and address to return filed document:

Name: _____
Address: _____
City, State, and Zip Code: _____

State of Missouri
Creation - LLC/LP 1 Page(s)

T0506343001

State of Missouri

MISSOURI RETAIL SALES LICENSE

LICENSEE:

FIRED UP LLC
406 N MAIN ST STE B
ROLLA
FIRED UP LLC
TEMPLE ROY E

MO 65401

LICENSE ISSUED:

APRIL 18, 2005

CARNAHAN JEAN A
SURRELL SCOTT A

MISSOURI TAX IDENTIFICATION NUMBER:

THE ISSUANCE OF THIS LICENSE IS CONTINGENT UPON THE LICENSEE'S COMPLIANCE IN ALL RESPECTS WITH THE REQUIREMENTS OF CHAPTER 144, RSMD, AND THE RULES PROMULGATED THEREUNDER.

THIS LICENSE IS VALID UNTIL CANCELLED AND SURRENDERED BY THE LICENSEE OR REVOKED BY THE DIRECTOR OF REVENUE.

THIS LICENSE MUST BE PROMINENTLY DISPLAYED IN THE PLACE OF BUSINESS.

DIRECTOR OF REVENUE

Tish Vincent

THIS BUSINESS IS REGISTERED INSIDE THE CITY LIMITS OF
ROLLA IN THE COUNTY OF PHELPS AND YOU ARE
LIABLE TO COLLECT AND REMIT ALL APPLICABLE STATE AND LOCAL SALES
TAXES.

~~THIS LICENSE IS NOT ASSIGNABLE OR TRANSFERABLE~~



MISSOURI DEPARTMENT OF REVENUE
MISSOURI TAX REGISTRATION APPLICATION
P.O. BOX 357
JEFFERSON CITY, MO 65105-0357 (573) 751-5860
E-mail: businessregister@dor.mo.gov

FORM
2643
(REV. 11-2004)

DLN (DOR USE ONLY)

ANSWER ALL QUESTIONS COMPLETELY. INCOMPLETE AND UNSIGNED APPLICATIONS WILL DELAY PROCESSING.

1. List your current or prior tax numbers:

Sales/Use Tax—Corporation Tax or Missouri Employer Withholding Tax

2. Check the items for which you are applying:

- ☒ Retail Sales Tax (Bond required)
☐ Temporary Retail Sales Tax (Bond required)
☐ Retail Liquor Sales (Bond required)
☐ Temporary Retail Liquor Sales
☐ Vendor's Use Tax (Bond required)
☐ Consumer's Use Tax

- ☐ Withholding Tax
☐ Withholding Tax (Domestic Employee)
☐ Withholding Tax (Transient Employer—Bond required)
☐ Corporate Income Tax
☐ Corporation Franchise Tax

3. Please indicate your reason for applying:

- ☒ New Business ☐ Purchase of Existing Business ☐ Reinstating Old Business ☐ Other _____

4. Describe the business activity, stating the major products sold and/or services provided.

website - we will be selling t-shirts, buttons and bumper stickers with our logo on them.

- ☒ Retail 1 % ☐ Wholesale _____ % ☐ Service _____ % ☐ Manufacturer ☐ Contractor ☒ Other 99 %

5. Do you sell any type of alcoholic beverages? ☐ Yes ☐ No
6. Do you sell food items that are exempt from state sales tax? ☐ Yes ☐ No
7. Do you lease/rent motor vehicles, that were purchased sales tax exempt, to Missouri customers? ☐ Yes ☐ No
8. Do you sell post-secondary educational textbooks? ☐ Yes ☐ No
9. Are you liable for consumer's use tax? ☐ Yes ☐ No
10. Do you sell domestic utilities? ☐ Yes ☐ No
11. Do you sell aviation jet fuel? ☐ Yes ☐ No
12. Do you sell cigarettes or tobacco products? ☐ Yes ☐ No

IF YOU ARE AN OUT OF STATE BUSINESS DOING BUSINESS IN MISSOURI, PLEASE ANSWER THE FOLLOWING QUESTIONS.

13. Do you have a location or job site in Missouri? If yes, attach a list of your locations including address, city, state, and zip code. Indicate if the location is inside or outside the city limits. ☐ Yes ☐ No
14. Are orders taken from your Missouri customers by telephone, non-resident salesmen, etc.? If resident salesmen, attach a list of cities in which they live and indicate if they are inside or outside the city limits. ☐ Yes ☐ No
15. Do your representatives who reside in Missouri:
A. Approve customer orders? ☐ Yes ☐ No
B. Make on the spot sales? ☐ Yes ☐ No
C. Maintain an inventory? ☐ Yes ☐ No
D. Deliver merchandise to the customer? ☐ Yes ☐ No
16. Do you have non-resident representatives, agents or temporary employees coming into Missouri on a regular or systematic basis? If yes, define the activities performed while in Missouri. ☐ Yes ☐ No
17. Do you have real or tangible personal property in Missouri? If yes, please describe: ☐ Yes ☐ No

BUSINESS NAME AND PHYSICAL LOCATION

18. Business Name (attach list if necessary for additional locations)

Fired Up!, LLC

Street, Highway (Do not use P.O. Box Number or Rural Route Number)

406 N Main St STE B

City, State, Zip Code

Rolla, MO 65401

County

Phelps

19. Federal Employer ID Number (FEIN) To obtain contact (800) 829-4933 or www.irs.gov

Business Telephone Number

(573) 364-4950

20. Is this business located inside the city limits of any city or municipality in Missouri?

- ☐ No ☒ Yes—Specify the city: Rolla, Missouri

OWNERSHIP TYPE

21. Please indicate your ownership type.

- ☐ Sole Owner (may include spouse)
☐ Partnership
☐ Limited Partnership - LP Number _____
☐ Limited Liability Partnership - LLP Number _____
☐ Limited Liability Limited Partnership - LLLP Number _____
☐ Government
☐ Trust
☐ Missouri Corporation - Missouri Charter No. _____
☐ Non-Missouri Corporation - Certificate of Authority No. _____
Limited Liability Company:
☒ Taxed as a Partnership ☐ Taxed as a Sole Owner ☐ Taxed as a Corporation
☐ Other _____
- ☐ Not required to register with Missouri Secretary of State
☐ Date Incorporated: _____
☐ State of Incorporation and Date Registered in Missouri _____
LLC Number LC0643875

OWNER NAME AND ADDRESS

22. Owner Name (Enter Corporation Name, if applicable)

Scott Sorrell (member)

Street, Route, or P.O. Box Number

406 N Main St Suite B

City, State, Zip Code

Rolla, MO 65401

County

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Owner's Social Security Number

Owner's Birthdate

Owner's Telephone Number

PREVIOUS OWNER INFORMATION (MUST BE COMPLETED)23. Is there a previous owner/operator for the business? ☐ Yes* ☒ No *If yes, the following section must be completed.

Name of Previous Owner/Operator

Name of Previous Business

Address of Previous Business

Missouri Tax ID No.

Check any of the following that you purchased from the previous owner:

☐ Inventory ☐ Fixtures ☐ Equipment ☐ Real Estate ☐ Other _____

Purchase Price

Seller's Name

BUSINESS MAILING ADDRESS (Reporting Forms are mailed to this address.)

24. Street, Route or PO Box Number

406 N Main St Suite B

City

Rolla

State

Zip Code

County

MO

65401

Phelps

Which forms do you want mailed to this address? ☒ All Tax Types ☐ Sales/Use Tax ☐ Corporate Income Tax ☐ Employer Withholding Tax**RECORD STORAGE ADDRESS (Do not use PO Box Numbers.)**

25. Street, Highway, Community

406 N Main St Suite B

City

Rolla

State

Zip Code

County

MO

65401

Phelps

OFFICERS, PARTNERS, MEMBERS, OR SPOUSE (of sole owner) (All information is required, attach list if needed.)

26. Name (Last, First, Middle Initial)		Title		Social Security No. or FEIN	Birthdate
Carnahan, Jean A.		Member			
Home Address	City	State	Zip Code	County	Effective Date of Title
312 N Meramac No 203	St. Louis	MO	63105	St. Louis County	3/1/2005
Name (Last, First, Middle Initial)		Title		Social Security No. or FEIN	Birthdate
Temple, Roy E.		Member			
Home Address	City	State	Zip Code	County	Effective Date of Title
1910 Hayseilton Drive	Jefferson City	MO	65109	Cole	3/1/2005
Name (Last, First, Middle Initial)		Title		Social Security No. or FEIN	Birthdate
Sorrell, Scott A.		Member			
Home Address	City	State	Zip Code	County	Effective Date of Title
2000 Vienna Rd	Rolla	MO	65401	Phelps	3/1/2005

SALES/USE TAX

27. Taxable Sales/Taxable Purchases Begin Date: M M D D Y Y
0 4 1 5 0 5

Temporary License FROM: M M D D Y Y TO M M D D Y Y

28. If you do not make taxable sales year round, please circle the months that you do:

January February March April May June July August September October November December

29. Estimated state sales/use tax liability (check one)

- ☐ 1. Monthly (Over \$500 a month) ☒ 2. Quarterly (\$500 or less a month) ☐ 3. Annually (less than \$45 a quarter)

30. COMPUTE AMOUNT OF BOND

Estimated Monthly Taxable Sales

~~Max Rate Example: \$0.225~~

Tax Rate

Monthly Tax

Amount of Bond *

250.00

X

7.6

=

19.00

X 3 =

57.00

(Round to nearest \$10)

Visit www.dor.mo.gov/tax/business/sales/rates to obtain sales tax rate information.

"If you calculate the amount of bond to be less than \$500, you are only required to submit a \$25 bond. If you calculate your bond to be \$500 or greater, you should submit the amount of bond figured. The Director of Revenue may require you to adjust the bond amount to a level satisfactory to cover your tax liabilities if returns are not filed timely and the taxes fully paid. Attach the appropriate bond form to your registration based on the type of bond checked.

31. Type of Bond (No personal or company checks)

- ☐ 1. Surety Bond ☒ 2. Cash Bond ☐ 3. Irrevocable Letter of Credit ☐ 4. None Required ☐ 5. Certificate of Deposit

CORPORATION/FRANCHISE TAX

32. Is this corporation registered with the Internal Revenue Service as a:

- ☒ Regular Corporation ☐ S Corporation

33. Corporate Tax Begin Date:

M M D D Y Y

34. Corporation Taxable Year End:

M M D D

35. Will the corporation be required to make quarterly estimated Missouri income tax payments? If the Missouri Estimated Tax is expected to be at least \$250, check the "yes" box. ☐ Yes ☒ No

TAX PREPARER NAME

TELEPHONE NO.

FEIN

EMPLOYER WITHHOLDING TAX

36. Withholding Begin Date:

M M D D Y Y

37. How many of your employees will work in Missouri?

no employees

38. Are all employees Missouri residents working in another state?

☐ Yes ☐ No

39. Estimated Monthly Gross Wages:

40. Withholding Tax Filing Frequency (check one)

☐ A. Annually, less than \$20 withholding tax per quarter☐ M. Monthly, \$500 to \$9,000 withholding tax per month☐ Q. Quarterly, \$20 withholding tax per quarter to \$500 per month☐ W. Quarter/Monthly (weekly), over \$9,000 withholding tax per month (required to pay tax electronically)

41. Does a parent company file withholding tax reports and receive full compensation?

☐ Yes ☐ No

42. If you do not pay wages year round, please circle months that you do.

January February March April May June July August September October November December

43. Withholding Tax Courtesy Mailing Address (duplicate withholding tax notices will be mailed to this address)

Business Name (DBA Name)

In Care of

Street, Route or PO Box

City

State

Zip Code

County

44. If you are an employer domiciled in a state other than Missouri and temporarily transacting business in Missouri, you may be defined as a transient employer. A transient employer must submit with this application a completed insurance certification slip indicating Missouri as a covered state for Workers' Compensation and a transient employer bond not less than \$5,000 nor more than \$25,000.

CALCULATE TRANSIENT EMPLOYER BOND

A. Missouri Withholding Tax

Monthly Gross Wages _____ x 6% = 0.00 x 3 = 0.00 (a)

B. Missouri Unemployment Tax

Average # of Workers _____ x \$7,000 = 0.00 x 3.38% = 0.00 / 4 = 0.00 (b)

(a) 0.00 + (b) 0.00 = 0.00 (Amount of bond—minimum \$5,000)

TYPE OF BOND ☐ Surety Bond ☐ Cash Bond ☐ Irrevocable Letter of Credit ☐ Certificate of Deposit

Comments:

SIGNATURE (ALL APPLICANTS MUST SIGN.)

45. I declare that the above information and any attached supplements is true, complete, and correct. The application must be signed by the owner, if the business is a sole ownership; partner, if the business is a partnership; reported officer, if the business is a corporation or by a member, if the business is a LLC, as reported on this application.

SIGNATURE

TITLE

DATE

CONFIDENTIALITY OF TAX RECORDS

Missouri Statute 32.057, RSMo, states that all tax records and information maintained by the Missouri Department of Revenue are confidential. The tax information can only be given to the owner, partner, member, or officer who is listed with us as such. If you wish to give an employee, attorney, or accountant access to your tax information, you must supply us with a power of attorney giving us the authority to release confidential information to them. (See enclosed Power of Attorney Form.)

MO 880-1883 (11-2004)

This publication is available upon request in alternative accessible format(s). TDD (800) 735-2966



MISSOURI DEPARTMENT OF REVENUE
DIVISION OF TAXATION AND COLLECTION
PO BOX 358, JEFFERSON CITY, MO 65105-0358
**SALES AND USE TAX
CASH BOND**

**REQUIREMENTS FOR COMPLETING FORM:
THIS FORM CANNOT BE ALTERED**

1. Form must be properly completed
2. Signed by applicant
3. NO personal or company checks will be accepted

KNOW ALL MEN BY THESE PRESENTS:

OWNER'S NAME (INCLUDE SPOUSE IF LISTED ON APPLICATION), ALL PARTNERS, CORPORATION, OR LLC NAME
Fired Up!, LLC

COUNTY

Phelps

STATE

Missouri

We, as principal, hereby file with the Missouri Department of Revenue this Sales/Use Tax Cash Bond and the attached CASHIER'S CHECK or MONEY ORDER in the amount of twenty five dollars (\$ 25.00).

We understand that we are required to comply with all the provisions of any statutory or constitutionally authorized state or local sales/use tax and all amendments lawfully adopted in relation thereto.

If we establish a satisfactory payment record for a period two years from the initial date of bonding or should we discontinue doing business prior to the two year bonding period, we can be released from the bonding requirement.

If we become delinquent and owe the Missouri Department of Revenue any Sales and Use Tax, penalties or interest, the Director of Revenue may forfeit this bond and apply it to any unpaid delinquencies. Should this occur, we understand that we may be required to file any additional bond as set forth by Missouri Sales Tax Statute 144.087, RSMo and supplement thereto.

Under penalties of perjury, I declare that I have examined this form and to the best of my knowledge and belief it is true, correct, and complete.

SIGNATURE OF OWNER, PARTNER, CORPORATE OFFICER, OR MEMBER

Scott Small Member

DATE

3/31/2005

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St. Louis Post-Dispatch (Missouri)

July 12, 2005 Tuesday
FIVE STAR LATE LIFT EDITION

SECTION: NEWS; Pg. A1

LENGTH: 792 words

HEADLINE: Realtors' lobbyist has close ties to governor's father Group wants signature on licensing bill; 2 U.S. agencies urge a veto

BYLINE: By JON SAWYER Post-Dispatch Washington Bureau Chief

DATELINE: WASHINGTON

BODY:

The Missouri Association of Realtors is mounting a high-powered, last-minute effort to win Gov. Matt Blunt's signature on a real estate licensing bill that the state Legislature passed unanimously this spring.

The group has given a one-month, \$50,000 contract to Washington lobbyist Gregg Hartley, a former Missouri official and longtime chief of staff to the governor's father, U.S. House Majority Whip Roy Blunt, R-Strafford.

Hartley's only assignment: "working to ensure the enactment of HB174," the licensing bill, which contains a requirement that real estate agents provide certain minimum services if they sign an exclusive brokerage agreement to represent a client. The governor has until Friday to sign the bill.

The Realtors association says the bill is intended simply to ensure that agents provide good service. Critics say the measure is aimed at stifling discount brokers who offer customers a set low fee for specific services, such as listing property in the local multiple listing service, and forgo the commissions typical in most real estate transactions.

The critics include discount agents such as Ron Eisenberg of Laurlei Properties in St. Louis. He calls the bill an "an unnecessary restraint on the marketplace . . . that would end up increasing the cost to consumers."

That's also the view of the Justice Department's antitrust division and the Federal Trade Commission, which sent Blunt an unusual letter in May urging that he veto the bill because they viewed it as anti-competitive.

In an interview Monday, Hartley confirmed the terms of the contract, which was first disclosed on the FiredUpMissouri.com Web site of Democratic activist Roy Temple. Hartley, now vice chairman of the Washington lobbying firm Cassidy & Associates, said he saw nothing improper in his role.

"Look, there are lots of lobbyists in Jefferson City who know the people they lobby," Hartley said. He added that he believed he had been hired not because of his close ties to Roy Blunt but because of his own experience handling licensing

issues as director of Missouri's Division of Professional Registration in 1986-87.

Jared Craighead, Matt Blunt's senior policy adviser, formerly worked with Hartley at Cassidy. His wife, Alison Craighead, is director of the professional registration division and is among the administration officials who will advise Blunt this week on the legislation.

Spokeswoman Jessica Robinson said e-mails and other communications to the governor's office have run strongly in favor of the legislation. She said Blunt had not yet decided whether to sign the bill, but she denounced Temple's Web site and tied it to the family of former Sen. Jean Carnahan, D-Mo.

"The Carnahan family-funded Blunt hate site has sunk to new lows in an attempt to score political points off a bill that the people's elected representatives voted for unanimously and that hundreds of Missourians have asked the governor to sign," she said. "It is this kind of useful information that the governor will consider when making a decision."

Temple lashed out as well, alleging that the Realtors association had turned to Hartley because of his close Blunt family ties.

"There's only one reason Gregg Hartley was paid \$50,000 for 29 days' work," he said. "Anyone who tries to spin it any other way is puffing smoke."

Sam Licklider, a Jefferson City lobbyist for the Association of Realtors, said "it's the first time I've ever hired a lobbyist out of Washington" -- and that he had done so to combat the intervention by "a couple of rogue federal agencies," the Justice Department and the FTC.

"I would submit that the Department of Justice and the FTC, at their mildest, are a hell of a lot more heavy-handed than a little real estate association sitting out here in the middle of the country."

Hartley said that after getting the contract last month, he sought the help of U.S. Sens. Christopher "Kit" Bond and Jim Talent, both Missouri Republicans. They co-signed a letter to the federal agencies dated July 6, objecting to what they called an "inappropriate and an unwanted intrusion into the state legislative process."

Spokesmen for Bond and Talent said they were not taking a position on the bill itself. U.S. Rep. William Lacy Clay Jr., D-St. Louis, also complained about the federal intervention, adding that he supported enactment of the bill because it "will provide consumers with protection and recourse."

Officials at the Justice Department and the FTC did not respond to requests for comment Monday. In a letter to Blunt on May 23, the agencies said enactment of the law "will likely decrease competition among real estate professionals" and could end up "causing some home sellers to pay thousands of dollars more in commissions to real estate brokers."

LOAD-DATE: July 13, 2005

The Hotline

NATIONAL JOURNAL'S DAILY BRIEFING ON POLITICS

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THE BLOGOMETER

The Blogometer is a daily report from The Hotline taking the temperature of the political blogosphere. The Blogometer appears in The Hotline's subscription-only tip sheet and in this space every weekday at noon.

9/9: Katrina, Katrina

Hurricane Katrina shows no sign of diminishing as the most contentious issue in the blogosphere. This may change some when the SCOTUS hearings for **John Roberts** begin next week, but don't expect the recriminations and ruminations re: the destruction of New Orleans and a big part of the Gulf coast to go anywhere soon.

Thanks to a *Time* investigation into the truth behind FEMA dir. **Michael Brown's** resume, he ends the week about where he began: reviled by the left and hung out to dry by the right. Regardless of whether Pres. **Bush** sticks by him, his reputation is destroyed. Plus, this a.m. brings a possible development in the Rove-Plame-Miller investigation and some embarrassing news for '06 and '08 candidates alike. Plus, the blogs most responsible for promoting the CBS Memogate scandal mark its 1-year anniv.

Plus, last weekend we attended part of the 3-day EschaCon convention in Philly for liberal bloggers and commenters to the popular lefty blog Eschaton. Our report is below; to go there directly, [click here](#).

FEMA: The Unsinkable Mikey Brown?

Where the blog swarm is headed, who's taking part, and what they're saying:

In an online-only report, *Time* reveals that Brown's resume is not what it appeared to be. He claimed a professorship, but at best he only served as an adjunct instructor while still a student. He claimed to have experience "overseeing" emergency services, but the job was more like that of an "intern." Brown also claimed a directorship at an OK nursing home that the management strenuously denies, and he apparently exaggerated his legal experience.

>> From the left • Public policy prof **Mark A.R. Kleiman** suggests that Brown may have "committed a felony" by tampering with his resume, a violation of 18 U.S.C. 1001, making him "eligible for up to five years of free room and board at the taxpayers' expense." • L.A.-based lefty **Marc Cooper**: "George W. Bush's FEMA looks with every passing moment more and more like

CONTACT US

blogometer@nationaljournal.com

...

SEARCH

...

RECENT ENTRIES

[9/9: Katrina, Katrina](#)

[9/8: N.O. Confidence](#)

[9/7: If It's Brown, Flush It Down?](#)

[9/6: The Battle of Orleans](#)

[9/1: The Rescuers](#)

...

ARCHIVES

[September 2005](#)

[August 2005](#)

[July 2005](#)

[June 2005](#)

[May 2005](#)

[April 2005](#)

[March 2005](#)

Fahrenheit 451's "Fire Department." It's specialty seems to be creating disasters, rather than managing them. **"Oliver Willis** writes, Bush turned "FEMA into nothing more than an extension of the campaign war chest handing out our tax dollars to his crony pals -- never giving a damn that they should actually be qualified for their positions. Now, people are dead." • **Josh Marshall**: "You can't make this stuff up. Or, I guess, maybe that's not the best line in this case." • **Steve Gilliard** points out a "devastating expose" in *The New Republic*, where UC-Boulder law prof **Paul Campos** determines "'exactly what, given Brown's real biography, he is qualified to do.' The answer, not surprisingly, is very little." • **Atrios** posts a photo of Gareth from BBC's "The Office," comparing Brown to the character, with the caption: "Assistant TO the manager."

>> From the right (and center-right) • Conservative **Betsy Newmark**: "I think that **K Lo's prediction** that he was going to resign on Friday saying that he had become more and more of a distraction from relief efforts is looking more and more likely. ... The only thing that seems to be protecting him now is that to fire him would be to give in to Bush's critics, something he is usually loath to do. So, ironically, criticism from people like [House Min. Leader **Nancy Pelosi** is helping Brown." • L.A.-based righty **Matt Szabo** writes, although "failure to do one's job -- especially when it contributes to the deaths of thousands -- should be reason enough to be fired," now Bush "finally has the face-saving excuse he needs to dump" Brown. • *Reason's* **Matt Welch**: "I think I can speak for most college dropouts when I say that there are few flavors of schadenfreude more tasty than watching some Type A kiss-ass get caught with a padded resume."

NRO's **Eric Pfeiffer** uncovers the official "FEMA for Kidz Rap."

RESPONSE: N.O. Diggity

There is no consensus re: a *New York Times* story this a.m. evaluating the political considerations involved in the WH and LA gov't responses to Katrina in the early going.

>> Liberal **Arch Pundit**: "I'm pretty sure you could drive some trucks over the Crescent City Connector, take the first exit and drop off food and water. Or if you really didn't think that was an option, drop it off the damn bridge. I'm very aware the Louisiana National Guard could have done the same thing -- but the Feds could have too..." • *Daily Kos'* **Armando**, on the WH's reticence to take away Dem Gov. **Kathleen Blanco's** authority: "This was not a novel legal issue. This was settled. What is was about was politics. 'Political implications.' That drove them. States rights again. Who gives a shit about political implications when people are dying? The Bush Administration, that's who. ... Politics first. Always for BushCo. It's all they know."

>> Noting that Blanco said "Nobody told me that I had to request" soldiers from the U.S. gov't, conservative **PrestoPundit** suggests she "should be impeached," as she "now admits herself that she doesn't know the high school basics of the American Federal system." At *Wizbang*, **Kevin Aylward** asks readers to "unleash your inner moonbat" and do the best imitation of a left-wing blog post blaming the Bush admin: "For the sake of your post assume that Bush did invoke the Insurrection Act and seized control of the Louisiana National Guard. Your assignment is to describe that historic takeover in the

BELTWAY BLOGR

Also from National Journal Group: **K. Daniel Glover** f the policy blogs.

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[Altercation](#)

style of either Kos or Atrios."

>> **Mickey Kaus**, who has been arguing the federalism angle already (see 9/7 Blogometer) But why should the Bushies even have the federalist excuse? Why should there be any doubt that the President can take command of a relief effort within our own country? Other countries, I suspect, don't have this hangup. Nor does private industry. Again, does UPS need to meet a special legal standard in court before it can take control of one of its branch offices?"

A number of right-leaning bloggers are upset by reports (courtesy the *New York Times*) that N.O. officials are seeking to seize residents' firearms, but private security contractors could keep theirs. ♦ NRA radio talker/blogger **Cam Edwards**: "Talk about class warfare." ♦ UCLA law prof **Eugene Volokh**: "Is there some implicit emergency exception to the right to bear arms here? On the other hand, doesn't the emergency make the right especially valuable to the rightsholders?" ♦ **The Spoons Experience**: "Some of these people are no doubt alive today at least in part because they had those guns. And some of these people are... cranky."

Yesterday we noted that FNC's **Major Garrett** did a radio interview with **Hugh Hewitt** in which he reported that LA DHS turned away Red Cross aid the afternoon after Katrina passed. On last p.m.'s "Special Report," Garrett followed up with a full report. An LA official appears to defend their decision; their thinking was that bringing in supplies would induce people to stay when the goal was to evacuate them. **The Political Teen** hosts video. UK-based libertarian **Samizdata**: "The job of aid agencies is to supply aid. It is not to tell people what to do. It is not to kidnap people from their homes. It is not to violate their Second Amendment rights and steal their property. It is not to prevent people from creating spontaneous order. It is not to prevent those who attempt to evacuate themselves from doing so." ♦ On the other side of the aisle, liberal **Corrente** asks: "Did we not know that they were prevented from delivering them by a combination of the intensity of the on-going damage in New Orleans, which extended into the second day after Katrina had moved on, and the lack of a mode to deliver supplies to those trapped in a city largely underwater? So, what has Major Garrett added to this narrative. Presumably, it's the fingering of the state government of LA as the ones responsible for all the went wrong in New Orleans by the Red Cross itself."

Harvard's **Juliette Kayyem** points out at *TPM Cafe* that Sen. **Joe Lieberman** (D-CT) discussed evacuation plans at Brown's confirmation hearing to become dep. dir. of FEMA, and that Brown said state and local gov'ts are "looking to us for leadership. They are looking to FEMA to tell them where are the holes in response plans?"

A few conservative bloggers point readers toward a photo-illustration identifying unused buses that could have been used to evacuate, clear roads despite flooding elsewhere in the city, and areas with available food that could have been delivered to the Superdome. A caption at the top exclaims: "There was a massive State and Local failure!" **Ramblings' Journal**: "The Crescent City Connection is the tall bridge over the Mississippi River. The bridge and the access ramps to the bridge have remained accessible from downtown New Orleans. That is how the rescue vehicles accessed New Orleans once they arrived. This overhead shot shows buses that were NOT underwater, yet were

Althouse
AMERICABlog
Amygdala
Andrew Olmsted
Andrew Sullivan
Angry Bear
Anti-Idiotarian Rottv
ArchPundit
Armavirumque
Austin Bay Blog
Baldilocks
Balkinization
Balloon Juice
Baseball Crank
Becker-Posner Blog
Best of the Web Tod
Bill Hobbs
BLACKFIVE
Blah3
BlameBush!
Blogging For Bayh
Blogs for Bush
Body and Soul
BopNews
Brad DeLong's Semi
Daily Journal
Brothers Judd Blog
Burnt Orange Report
BushTracker
BuzzMachine
Calblog
California Conservat
Captain's Quarters
Charging RINO
Chicago Boyz
Chrenkoff
Chris C. Mooney
Clayton Cramer
Cold Fury
Colorado Pols
Commonwealth
Conservative
Conspiracy to Keep
Poor and Stupid
Corrente
Crooked Timber
Crooks and Liars
Cut on the Bias
Daily Kos
Daily Pundit

not used to evacuate people in the Superdome or in the Convention Center. The magic question: why!?"

Liberal **Pandagon's Amanda Marcotte** calls attention to a header at **The Conservative Voice** asking: "Are Blacks to Blame for New Orleans Disaster?" Marcotte: "You can imagine what the answer is." TCV's post quotes black conservative Rev. **Jesse Lee Peterson** saying: "Black people died not because of President Bush or racism, they died because of their unhealthy dependence on the government and the incompetence" of Blanco and N.O. Mayor **Ray Nagin** (D).

PoliPundit's Jayson Javitz, on a **DSCC fundraising appeal** inspired by Bush's handling of Katrina: "Again, folks, modern-day leftism is not a political ideology. It's a mental disorder."

KATRINA: Caught In The Gulf Stream

Liberal **Joystory** declares: "New Orleans must stop pumping now!" "Scientists are warning that if they follow through with the plan to pump the water out of the city and back into Lake Pontchartrain and the Mississippi, there will be a massive contamination of the lake, river, delta and Gulf ecosystem that could have untold repercussions on the entire food chain of the Gulf region. ... How much mayhem will these toxins do before cause and effect is even acknowledged let alone laws and regulations invoked to prevent further contamination, if by then it is even possible short of abandonment of the entire infected ecosystem for human habitation and food cultivation?"

Re: the **New York Times' claim** that **Geraldo Rivera** elbowed aside, of authorities to save an elderly woman, **Johnny Dollar's Place** hosts what it calls "all relevant footage of Geraldo's rescues from the home for retired nuns" and asks readers to make up their own mind.

Black conservative **La Shawn Barber** recalls a column she wrote about Rep. **Sheila Jackson Lee** (D-TX), who "wanted whoever was in charge of naming hurricanes to consider 'black' names like Keisha, Jamal and Deshawn. Self-esteem issues. Since the majority of refugees devastated by Hurricane Katrina are black, and Lee and her fellow [CBC] cronies believe the slow federal response was because they were black, I wonder if she's changed her mind?"

Echidne of the Snakes comments on Bush's signing of an exec. order allowing contractors to pay below the "prevailing wage" in reconstruction contracts: "It's the contractors who will benefit if they can find people desperate enough to work for very little money. And what did Bush sign to curtail the contractors' profits from the hurricane? As far as I know, nothing at all."

Andrew Sullivan publishes a reader e-mail without comment: "[F]rankly, I'm stunned that not a single prominent Democrat has called for Bush's resignation. Apparently, the Democrats are just too cowed by their electoral losses, but it's still stunning. Not that Bush would actually resign, of course, but calling for his resignation would force Republicans up and down the line into the unenviable position of defending this indefensible incompetence. How long do you suppose the GOP would have waited to call for President Kerry's

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resignation?"

NRO's [The Buzz](#) attended MoveOn's Katrina-related protest outside the WH, posting photos, and [reporting](#) that there were "about 200 protesters on hand" with just 2 Katrina survivors in attendance, and "they kept their criticism somewhat muted when compared to the other protesters."

WHITE HOUSE '08: Gee, Rudy

[Josh Marshall](#) gives ex-NYC Mayor **Rudy Giuliani** a sarcastic "way to go" for "[endors\[ing\]](#)" Cincy mayoral candidate **Charlie Winburn**, "who says [only born-again Christians](#) should be elected to public office."

ROVE-PLAME-MILLER: Will Judy Crack?

[Arianna Huffington](#) writes at her [Post](#): "This just in: **Judy Miller's** principled, absolute stand is crumbling." Huffington asked Miller atty **Floyd Abrams** about whether Miller was looking to cut a deal. Abrams' reply: "If there are any discussions, they would be private." Although Abrams also told her that Miller was "resolute" about not testifying, Huffington asks rhetorically: "If she is so 'resolute' why get all cutesy about it? Why not just say, 'No, she's not talking. And that's final'?" Because a "source with inside knowledge" tells her that the *Times* has received "additional legal advice very different" from Abrams', and that "there are definitely negotiations under way."

ANNIVERSARY: They'd Rather Be Exposing Forged Documents

Last p.m. **Charles Johnson** at [Little Green Footballs](#) reminded readers: "One year ago tonight the Rattergate scandal broke, as CBS News and **Dan Rather** used obviously faked documents to try to influence the course of a presidential election -- and got caught red-handed." He re-posts his original [animated GIF](#) superimposing CBS's memo with the same text typed out on MS Word -- which early on helped persuade many that the memos were forgeries - plus a link to LGF's [CBS Killian Document Index](#).

[Power Line's John Hinderaker](#) dates the anniv. to this a.m.: "It was at 7:51 on the morning of Sept. 9, 2004, that **Scott [Johnson]** hit the 'save' button on the original version of '[The Sixty-First Minute](#),' that discussed the '60 Minutes' program on President Bush's National Guard service that had aired the previous evening ... now the most famous post in the young history of the blogosphere ... Have things changed in the ensuing year? Well, sure. I think the MSM are more careful about documents now, and perhaps about other claims that can readily be fact-checked. My own impression, though, is that, far from having ameliorated since last year, the liberal bias of the MSM has, if anything, worsened. I think the fact that alternative media now exist has prompted some reporters and editors to abandon even the pretense of objectivity."

ROBERTS: They're Moving On Roberts

Univ. of WI-Madison law prof [Ann Althouse](#) caught the [USA Today](#) report yesterday that MoveOn was going to go after CJ nominee **John Roberts** with an ad featuring Katrina-caused carnage, compares it to MoveOn's '04 objection

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[Kottke.org](#)
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[La Shawn Barber's](#)
[Corner](#)
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to Bush using 9/11-related imagery in his campaign ads, and adds: "I'm lawyer enough to know how to make the argument that that is not rank hypocrisy, but, man, *that is rank hypocrisy!*" Later noting MoveOn's later statement that they had no such plans to do so, adds: "So what do you think? Never planned to do it or saw the criticism and changed?"

THE REPLACEMENTS: Al B. Sure

RedState's Erick Erickson, a GOP consultant who hears his share of whispering: "[W]hat I'm told is a reaffirmation of earlier reports -- [AG **Alberto**] **Gonzales** is not going to be the pick. The caveat as always is that 'POTUS is POTUS.' He will do as he wants. ... I'm told not to pin hopes or fears on Gonzales or [Edith] **Clement** or even **Janice Rogers Brown**. But, I have also been told not to write off [Michael] **Luttig**. [Edith] **Jones** is a possibility, but not a probability right now."

MISCELLANY: This Would Be News, But, You Know ...

Radio Equalizer's Brian Maloney reports that while Air America "refuses to respond to **Michelle Malkin** and myself directly" -- the 2 have led investigative efforts -- "they're talking to others who publish follow-ups and news summaries. Their key tactic: outright issue deflection." As **Al Franken** is a possible future MN SEN candidate, he makes a note of the Minneapolis *Star-Tribune's* treatment of the story, which he deems inadequate: "The story ignores our primary point: Franken claimed on the air in August he'd heard about the Gloria Wise payments just a week earlier. We have the transcript. But he signed the document last November which discusses the Gloria Wise 'loan.'"

Fired Up! America reports on some interesting connections and possible misdeeds involving Rep. **Tom DeLay**, House Maj. Whip **Roy Blunt**, disgraced lobbyist **Jack Abramoff**, and associates involved in their leadership PACs.

Power Line: "Will we ever find out what was going on with [ex-NSA **Sandy**] **Berger's** stealing documents from the National Archives? Does anyone care? Don't hold your breath waiting for the MSM to get to the bottom of it." Pro-GOP **Blogging for Bryant** points out, TN SEN candidate/Rep. **Harold Ford Jr.** (D) "has now put out 12 Hurricane Katrina-related press releases since last Wednesday 8/31," but "didn't bother to show up and vote" on major appropriation bills on 9/2 and 9/7, although he did issue more releases. More: "Maybe Ford should stop focusing so much on getting his name in the paper and start doing the job he was elected to do."

Hit and Run's Ron Bailey, on Georgetown prof **Edmund Pellegrino**, Bush's new Bioethics Council chair: "The bottom line: Pellegrino's appointment as chairman of the President's Bioethics Council will, if anything, increase that body's opposition to a lot [of] biotechnological progress."

MyDD's Chris Bowers builds on his report about left- vs. right-blogsphere traffic: "Two years ago, *Instapundit* had an audience three times larger than *Daily Kos*. Now, *Daily Kos* is the equal of nearly the entire conservative blogsphere."

Pejman Yousefzadeh, at **RedState**, on the aftermath of the Volcker Report on Oil-for-Food: **Kofi Annan** is "trying to get ahead of any attempt to oust him by posing as a champion of U.N. reform. This, needless to say, simply won't

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do--especially given the less-than-frank manner in which the Secretary-General has dealt with the Volcker Commission (cf. Annan's reluctance to mention the role his son has had in the oil-for-food program). ... Annan can save himself by being a genuine reformer and putting his money where his mouth is. Let's see if he is willing to do so. If not -- and I suspect he won't -- let's have him leave."

DEMOCRATS: Among The Atriot's

PHILADELPHIA -- This past weekend, the Blogometer traveled a few hours north to Philly -- home of **Sylvester Stallone's** Rocky Balboa, **Jonathan Franzen's** Passafaro family, and Ben Franklin's *Poor Richard's Almanack* -- for the first annual EschaCon 2005, a gathering of liberal bloggers and blog readers known amongst themselves "Atriot's" or "Eschatonians." Indeed, it's a fitting location for a convention of e-pamphleteering left-wing underdogs. More than that, the city is something of a Mecca for the left-blogsphere. Many gather on a regular basis for the popular happy hour Drinking Liberally, which has become a place to be seen for local Dem pols. Plus, 10 of the top 50 most-popular liberal blogs are based there. Number one among them is Eschaton, the long-running weblog of **Duncan "Atrios" Black**.

Unlike other community blogs -- we're thinking here of Daily Kos, MyDD and the conservative RedState -- Eschaton is a relatively simple website. The blogs just mentioned all use Scoop, a type of blogging software written specifically for community-oriented blogs; it is these sites that have enabled what bloggers call "diaries." By contrast, Black is still using the same Blogger account he started with in early 2002. Little has changed at the website in that time; he still uses the long-obsolete original template. The website's community aspect derives from the comment feature at the bottom of each post. Black's comments are powered by HaloScan, which in its free version -- which Black uses -- will not hold comments after a certain period, about a week on his blog. The comments on Atrios (Black's handle often substitutes for Eschaton as the name of the site) are ephemeral; the community exists with the participants.

The convention ran from a cocktail party on Friday evening to a softball game on Sunday afternoon, but we only attended the discussion panels on Saturday: the morning session featured bloggers talking strategy; the afternoon brought Dem pols and the campaign cmtes to meet with the attendees.

The morning panel comprised **NTodd**, a VT instructor who writes Dohiyi Mir and seemed a bit like a non-obnoxious **Tom Green**; Dem activist and early Sheehan-promoter **Bob Fertik** from Democrats.com; self-described "recovering economist" Black; ex-journalist/*Suburban Guerrilla* **Susie Madrak**, and **Spin Dentist** of All Spin Zone. The panel was moderated by **Thersites** from Metacomment's, a NY-based English professor (also Donnelly's husband).

The original topic had been "Potential for Progressive Blogging," but just as with everything else last week, the horrors unfolding in New Orleans immediately took precedence. Anyone who has read the discussion boards at Eschaton would recognize the subject matter of the discussion that unfolded over the next 2 hours. But the tone was different. While the same calls came to "Impeach Bush!" (as

TBogg
The Agitator
The Al Franken Show
The American Street
The Daily Howler
The Daily Outrage
The Decembrist
The Gadflyer's Fly Ti
The Hamster
The Hedgehog Repo
The Huffington Post
The Independit
The Kentucky Demo
The Left Coaster
The Liquid List
The Mahablog
The Moderate Voice
The News Blog
The Peking Duck
The Poor Man
The Sideshow
The Smirking Chimp
The Swift Report
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Think Progress
This Modern World
Tim Blair
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tonypierce.com +
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Transterrestrial Musi
TVNewser
Uggabugga
Unqualified Offering
Vodkapundit
Volokh Conspiracy
Wampum
War and Piece
Washington State
Political Report
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WILLisms
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were Fertik's well-received first words) they came without the same profanity, and without the same bitter edge. And despite the elevated status of the panelists up front -- Atrios included -- the audience was oftentimes more vocal than the panel.

Typically, the liberal blogosphere is no more complimentary of the MSM than conservatives are -- for different reasons -- but this weekend they were surprised to have some nice things to say, particularly about FNC's **Shepard Smith**. Madrak saw comparisons to the 90's when the elite media reached a point with then-Pres. **Clinton** where they had a "visceral disdain" for him; now Bush is in the same boat, saying: "I don't think this is going to go away." Media training for bloggers was an idea that made sense to the Eschatonians assembled. But what are bloggers, one asked: "para-journalists"? Madrak expressed her preference for the term "news concierge."

NTodd and others called attention to the Bush admin's "bending of time" and the use of different tenses when speaking to the media. Bush may say help is "on the way," but what about the help that wasn't there for days and days? An audience member added to the list of the WH's deceptive maneuvers the use of passive tense, such as when Bush says "the results are unacceptable" -- without actually saying *whose* results, or unacceptable to *whom*.

Black defended "politicizing" the hurricane. Calling for impeachment might not be the best course of action, but if blaming Bush helps, do it: "Politics is about trying to get things done." He argued, "We can make being a little shrill okay, make people used to the idea that Dems can be hardasses." Black also observed: "Democrats could win the House back easily if it became the **Lou Dobbs** party" -- anti-immigrant economic populists, as he described -- "But I don't want to be in that party."

As is the case with many progressive-left strategy discussions, the conversation fell to a Lakoffian framing-of-the-message debate. Fertik suggested a set of "Contract With America"-type promises to the voter summed up as "Fix America First." The concept went over well, except for a woman who stood up and admonished the crowd: "Fix America First is... horrible. I think it should be inherent in the phrase ... but it's too isolationist. We can't close down. And that would be broadcast all over the world."

Also present was *New York Times* columnist **Paul Krugman** -- affectionately known to Atrios as The Shrill One -- as an observer in the audience. Now *that's* the new media for you. Krugman had showed up unannounced, but when mentioned by a panelist, he stood, offered some thoughts, and joked that as a member of the media he was there strictly "out of non-partisan interests, of course." Krugman said that "bloggers can do stuff we [employees of the MSM] can't," i.e. calling attention to controversial stories the media has downplayed: "I'm enormously grateful and I couldn't do what I do without it."

The afternoon panel brought Rep. **Louise Slaughter** (D-NY), who has worked to court the netroots as much as any member of Congress. Along with **Sherrod Brown** (D-OH) she is one of a few who have hired ex-Dean bloggers to coordinate their Internet efforts (see our 7/14 report on Slaughter's anti-Karl Rove BlogAds). Slaughter spoke as if at a particularly friendly, albeit dissatisfied, constituent meeting. While she and the Atrios had plenty of

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common ground -- Slaughter received copious clapper when she announced how she'd like to "slap Bush silly" -- she also had to explain why a walkout of House Dems wouldn't be a constructive move.

The most-popular candidate attending was **Patrick Murphy**, an Iraq war vet from the Philly burbs, a **Paul Hackett**-type self-proclaimed progressive. Murphy has had recent fundraising success, and was among the more interesting speakers, drawing acclaim for saying: "The president was fiddling his guitar while people were lying dead in the water. That's not leadership." And: "Leadership is leading from the front, where our president should be." Other Dems present were state Rep. **Mark Cohen** and PA SEN candidates **Chuck Pennacchio** and the lesser-known **Alan Sandals**. The 2 are challenging Treas. **Bob Casey Jr.** (D) for the nod; Casey is the only Dem SEN candidate to have not met with Philly progressives at Drinking Liberally.

Also in attendance were DNC's **Jesse Berney** and DCCC's **Ali Wade** -- both of whom gamely explained the Beltway approach to '06 before a somewhat unsympathetic crowd.

To the contrary of many who'd think the blogosphere is dominated by the young, the average age here was about 40, with many of them over the age 50. Of course the turnout here might reflect those with the means to come -- but then there didn't seem to be anyone below 30. Overall the Atriot's are not much different from regular, middle-class Dem activists, albeit on the geeky side. And one happens to be a Benedictine monk. For participants' photos, see: [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#) and [here](#).

As of late p.m. on 9/9, this version of the report should be considered the "Complete & Uncut" edition.

THOUGHT OF THE DAY: Outplay, Outwit, Outlast

Lefty **Max Sawicky** suggests "any funding failure as far as flood control goes is a decades-long, bipartisan, dare I say systemic thing. As in two-party democratic-capitalism (sic) systemic. [Ex-Pres.] **Clinton**'s pissant \$100 million program wouldn't have made any difference. It was more of his Administration's teaspoon liberalism, when what was needed was industrial-strength social democracy, something the public would not have accepted. That leaves the efficiency of evacuation and the rescue effort as the key issues. State and local government failed at evacuation, and the Feds failed to backstop evacuation. The Feds failed at rescue. Looking forward, I see the blossoming of survivalism."

LEST WE FORGET: Were We Laughing About 9/11 By Week Two?

*Huffington Post's anti-Huffington Post contributor **Greg Gutfeld** concocts a "HUFFPO EMERGENCY BUSH BASH BLOG APPLICATION FOR THE VICTIMS OF ALL DISASTERS EVERYWHERE!" Questions include:*

Do you always try to relate large-scale tragedies to your own life? Do you say things like,
 _ "Wow, I was just in New Orleans."
 _ "I had a connecting flight there."

- _"I bought some beads in terminal 2."
- _"I rented the Big Easy once. It was good."

Friday Bonus "Lest We Forget"! Don't miss "Fablog Presents: The Do-It-Yourself Emergency Management Guide!" Projects include: *"Do-It-Yourself National Guard!* First get some old socks. Sew on some buttons for the eyes. Use yarn for the hair but keep it trimmed short on accounta discipline!"

Posted by William Beutler at 12:39 PM

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